

1 TERRENCE M. JACKSON, ESQ.
2 Law Office of Terrence M. Jackson
3 Nevada Bar No.: 0854
4 624 South Ninth Street
5 Las Vegas, NV 89101
6 (702) 386-0001 / Fax: (702) 386-0085

7 *Counsel for Defendant, Roger Grodesky*

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 UNITED STATES OF AMERICA,)

11 Plaintiff,)

12 vs.)

13 ROGER GRODESKY(3),)

14 Defendant.)

Case No. 2:12-CR-00084-APG-GWF-3

15 **MOTION TO SUPPRESS ITEMS TAKEN FROM DEFENDANT'S**
16 **PERSON AS WELL AS DEFENDANT'S STATEMENTS RESULTING**
17 **FROM WARRANTLESS ARREST WITHOUT PROBABLE CAUSE**

18 (Hearing requested)

19 **FACTUAL STATEMENT**

20
21 On September 27, 2009, Defendant, ROGER GRODESKY, was arrested at
22 South Point Casino because he had been seen entering the casino with Thomas Lamb,
23 who had later been apprehended attempting to cash a voucher ticket for \$1,000.00 at
24 the South Point Casino's main cage which he had created earlier using a fraudulent
25 credit card at a Global Cash ATM machine inside the casino.

26 After Lamb presented the voucher with the fraudulent credit card along with
27 a counterfeit driver's license, he was taken into custody by casino security guards.
28 Las Vegas Metropolitan Police were then notified and they advised security to detain
Lamb's companion Grodesky. When Metro officers arrived they took Grodesky into

1 custody, allegedly because in-house surveillance video showed ...“ Lamb and
2 Grodesky entering the casino together.”

3 A subsequent search incident to arrest revealed that Grodesky was in
4 possession of a counterfeit Nevada driver’s license in the name of Paul Brown and
5 a counterfeit AT&T service group card in the name of Roger Brown and a counterfeit
6 *Visa 1* Debit card, account ending in xxxx-4974, in the name of Roger Brown, a
7 counterfeit *Only 1* Visa Debit card, account ending in xxxx-8147, in the name of
8 Roger Brown, and a *Green Dot* Visa card, account ending in xxxx-5930, in the name
9 of Roger Brown. After the arrest and search of his person, Grodesky was interviewed
10 and made incriminating admissions. Such further facts as necessary will be developed
11 at an evidentiary hearing on this motion.

12
13 **I. THE SEARCH OF DEFENDANT’S PERSON ON SEPTEMBER 27, 2009,**
14 **CANNOT BE JUSTIFIED AS A SEARCH INCIDENT TO A LAWFUL ARREST.**
15

16 The police reports released to counsel indicated that Grodesky’s arrest was
17 based not upon what Grodesky did, but what Thomas Lamb had done. The law is
18 clear that a person’s mere propinquity to others independently suspected of criminal
19 activity does not, without more, give rise to probable cause to arrest. *United States*
20 *v. Reyes*, 225 F.3d 71 (9th Cir. 2000); *Ybarra v. Illinois*, 444 U.S. 85, 91, 100 S.Ct.
21 338, 62 L.Ed. 238 (1979). Nor is nearness to the place of arrest of a co-conspirator
22 or the place of illegal activity sufficient to establish probable cause. *See, United*
23 *States v. Di Re*, 332 U.S. 581, 593, 68 S.Ct. 622, 92 L.Ed. 210 (1948); *United States*
24 *v. Springfield*, 196 F.3d 1180, 1183 (10th Cir. 1999). Mere presence at the scene of
25 a crime, without more, does not support a finding of probable cause to arrest. *Wilson*
26 *v. Attaway*, 757 F.2d 1227, 1238 (11th Cir. 1985). *See also, United States v. Soto*, 375
27 F.3d 1219 (10th Cir. 2004); *United States v. Collins*, 472 F.3d 1067 (9th Cir. 2007).

28 Probable cause did not arise here because there are too many innocent

1 explanations that can account for Grodesky's entry into a large casino with someone
2 else who then apparently chose to commit an illegal act. Unless the government could
3 also show some actions of aiding and abetting or furthering the illegal acts of a
4 conspiracy, merely being with another criminal is not enough. Probable cause cannot
5 be inferred from innocent acts. The mere entry by two individuals together into a
6 casino is not any evidence of a crime. As the court stated in *United States v. Hillison*,
7 733 F.2d 692, 697 (9th Cir. 1984), ... "In order to find probable cause based on
8 association with persons engaging in criminal activity, some additional circumstance
9 from which it is reasonable to infer criminal enterprise must be shown." *See also*,
10 *United States v. Ramirez*, 963 F.2d 693, 698-99 (5th Cir. 1992). (Emphasis added)

11 It is respectfully submitted no additional circumstance or circumstances existed
12 in this case from which probable cause could be inferred. It was only after Grodesky
13 had been illegally detained, arrested and unlawfully searched and questioned that
14 probable cause was unconstitutionally generated.

15 The contents of the search of Grodesky's person and everything resulting
16 therefrom must therefore be suppressed as a clear violation of the Defendant's Fourth
17 Amendment rights.

18
19 **II. THE STATEMENT(S) WHICH RESULTED FROM THE ILLEGAL**
20 **ARREST OF THE DEFENDANT MUST BE SUPPRESSED AS FRUITS OF**
21 **THE POISONOUS TREE.**

22
23 But for the Defendant's illegal arrest and detention, the government would not
24 have obtained inculpatory statements from the Defendant. Defendant respectfully
25 submits that as his arrest on September 27, 2009, was without probable cause or
26 justification and violated his Fourth Amendment rights, the statements he made that
27 night to police must be suppressed as fruit of the poisonous tree. *Wong Sun v. United*
28 *States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). As the court observed in

1 *Moya-Matute:*

2 The exclusionary remedy extends not only to the primary evidence
 3 obtained from the illegal seizure, but also to the indirect product of the
 4 seizure, the secondary evidence, or the “fruit of the poisonous tree.”
 5 *Nardone v. United States*, 308 U.S. 338, 341, 60 S.Ct. 266, 84 L.Ed. 307
 6 (1939). Once the defendant has shown a casual connection between the
 7 illegal seizure and the specific evidence alleged to be the fruit of the
 8 seizure, the government has the burden of persuasion of showing that
 9 the evidence is admissible because it was obtained by means sufficiently
 10 distinguishable to be purged of the primary taint. See *Brown v. Illinois*,
 11 422 U.S. 590, 602-04, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975); *Wong Sun*
 12 *v. United States*, 371 U.S. 471, 488, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).
 13 Even “the indirect fruits of an illegal search or arrest should be
 14 suppressed when they bear a sufficiently close relationship to the
 15 underlying illegality.” *New York v. Harris*, 495 U.S. 14, 19, 110 S.Ct.
 16 1640, 109 L.Ed.2d 13 (1990).
 17 *United States v. Moya-Matute*, 735 F.Supp.2d 1306 (D.N.M. 2008)
 18 (Emphasis added)

19 The statements in this case resulted directly from Grodesky’s improper arrest
 20 and therefore must be suppressed.

21 CONCLUSION

22 Defendant was detained and arrested without probable cause. Everything
 23 resulting from that improper arrest must be suppressed. Defendant respectfully
 24 requests an evidentiary hearing to establish the government has not met its burden
 25 to justify the arrest in this case.

26 Respectfully submitted this 5th day of July.

27 /s/ Terrence M. Jackson
 28 TERRENCE M. JACKSON, ESQ.
Counsel for Defendant, Roger Grodesky

...

CERTIFICATE OF SERVICE

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Case No.: 2:12-CR-00084-MMD-GWF-3

I hereby certify that I am an employee of the Law Office of Terrence M. Jackson, and that on the 5th day of July, 2013, I served a true and correct copy of the foregoing: Defendant, ROGER GRODESKY'S, Motion to Suppress Items Taken From Defendant's Person as Well as Defendant's Statements Resulting From Warrantless Arrest Without Probable Cause (Hearing requested) as follows:

[x] Via CM/ ECF, the electronic filing system for the U.S. District Court of Nevada as indicated below:

DANIEL G. BOGDEN
United States Attorney
KIMBERLY M. FRAYN
ANDREW W. DUNCAN
Assistant United States Attorneys
333 Las Vegas Blvd. So., Ste. 5000
Las Vegas, Nevada 89101
T: (702) 388-6336
Attorneys for Plaintiff

By: /s/ Ila C. Wills
Assistant to Terrence M. Jackson, Esquire